IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 36628 of 2003(I)

PETITIONER:

K.P. VASUDEVAN PILLAI (DRIVER,
THIRUVALLA, RETIRED ON 31.5.1997),
AGED 61 YEARS, S/O. KRISHNA PILLAI,
RAJALAKSHMI BHAVAN, NEDUMPURAM P.O.,
THIRUVALLA.

BY ADV. SRI.K.P.RAJEEVAN

RESPONDENTS:
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1. KERALA STATE ROAD TRANSPORT
CORPORATION, REPRESENTED BY ITS MANAGING
DIRECTOR, TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPRAM.

2. THE DISTRICT TRANSPORT OFFICER,
K.S.R.T.C. THIRUVALLA DEPOT.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 36628 of 2003 APPENDIX

Petitioner's Exhibits

Ext.P1:True copy of Service Order No.120/75 dated 24-10-1975

Ext.P2: True copy of Page 1 and 3 of his Pension Payment Order

Ext.P3: True copy of representation filed by the petitioner on 19-5-2003 before the 1st respondent

Ext.P4: True copy of Memorandum No.PLE 04801/93/L.Dis dated 15-10-1993

Ext.P5: True copy of judgment of W.P(C) 24077/03 fsyrf 30-7-2003

Ext.P6: True copy of Memorandum No.PA13-062415/98 dated 18-10-2003

Ext.P7: A true copy of Order dated 22-9-1979 issued by the 1st respondent

Respondent's Exhibits

Ext.R1(a) : True copy of the bilateral agreement dated 13-4-1999

Ext.R1(b) True copy of the Rules issued on 22-9-1979

//True copy//

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PIUS.C.KURIAKOSE .J

W.P.(C) No.36628 of 2003

Dated this the 22nd day of March 2007

JUDGMENT

The petitioner who is a retired employee of the 1st respondent K.S.R.T.C is aggrieved that the Government service (in the Fire Force Department) which he had undergone prior to his joining K.S.R.T.C has not been counted for the purpose of pension. When several representations submitted by him failed to produce results he approached this Court and this Court by the Judgment in W.P.(C) No.24077 of 2003 directed the respondents to dispose of his representation which was Ext.P3 in that case. Pursuant to that direction the K.S.R.T.C has passed Ext.P5 order denying the petitioner's claim .Ext.P5 is challenged in this writ petition.

As directed by this Court, the standing counsel for the K.S.R.T.C. has produced Ext.R1(a) copy of the bilateral agreement and also Ext.R1(b) order dated 22-9-1979. Mr. Johnson P. John Standing counsel for the K.S.R.T.C submits that R1(b) has nothing to with that of R1(a) and the conciliation agreement dated 21-7-1979; and that the petitioner is not entitled to take advantage of anything contained in Ext.R1(b). Mr. Rajeevan counsel for the petitioner does not agree with this submission. He refers to clause 10 of Ext.R1(a) bilateral agreement and submits that

going by that, the clause relating to pension will become operative with effect from 1-3-`1997 and since the petitioner had service up to 31-5-1997, the petitioner is entitled to have his pension calculated reckoning his service in the Fire Force Department also. Mr. Johnson.P.John submits that retrospective effect has been given only for revised scale of pay and to clauses relating to Dearness allowance and House rent allowance. All other clauses including those relating to pension are specifically provided to become effective only from 1-2-1999 the day on which the petitioner was no longer in the service of the K.S.R.T.C. Mr. Rajeevan drew my attention to Ext.P7 order dated dated 22-9-1979 issued by the K.S.R.T.C pursuant to the conciliation agreement dated 21-7-1979 referring to clause 11. He submitted that the expression 'qualifying service' has been defined as follows:-

> *All services in the Corporation including under any Department of the Government prior to 1-4-1965 whether in regular, reserve, daily wages, full time contingency, full time work establishment, L.C.T or N.M.R, Break of service for periods 'exceedings' three months in the reserve, contingency, work establishment, L.C.T, N.M.R or Daily wages shall be treated as break of service.*

Sub clause 2 reads as follows

> *In the case of employees appointed on or after 1-4-1965 who have had service under government in any Department prior to their joining the service of the Corporation, such service shall also be reckoned as qualifying service, provided the period of break between the date of relief from Government Service and the date of joining the service of the Corporation does not exceed three months.*

The gap between termination of the petitioner's service in the Fire Force Department and his joining K.S.R.T.C is just one day.

Counsel then referred to clause 31 of Ext.R1(a) which reads as follows:-

> *As indicated in clause X, this agreement will be valid for a period of five years from 1-3-1997. Wage negotiations shall be initiated six months before the date of expiry of the period of this agreement.*
>
> *Clauses of the previous agreements which are not amended by and not expressly reproduced in this agreement and not cancelled, amended or modified by orders of the Corporation, or Government will continue to operate.*

The learned standing counsel for the K.S.R.T.C. has not been able to show me any order, rule or subsequent bilateral agreement by which the definition of qualifying service as provided in Ext.P7 has been altered. It will be noticed from Ext.P4 that for various other service benefits such as weightage,increments etc the petitioner's service in fire force was reckoned

by the K.S.R.T.C.

The result of the above discussion is that the writ petition succeeds. It is declared that the government shall consider the petitioner's service in the Fire Force Department and the said service should also be counted as qualifying service for the purpose of pension. The respondents are directed to re-quantify the pension payable to the petitioner and release all benefits including arrears at any rate within two months of receiving a copy of this judgment.

(PIUS.C.KURIAKOSE, JUDGE)

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